

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3820 of 1999

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

THAKORE GANDAJI CHUNDAJI

Versus

SECRETARY

Appearance:

MR TUSHAR MEHTA for Petitioners
NOTICE SERVED BY DS for Respondent No. 1
Mr.Joshi, AGP for Respondent No. 5
MR SB BRAHMBHATT for Respondent No. 6 to 13

CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and

MR.JUSTICE K.M.MEHTA

Date of decision: 05/10/1999

ORAL JUDGEMENT

(per Thakkar,Actg.C.J)

1. This petition is filed by the petitioner for an appropriate writ, direction or order declaring the provisions of Section 56 of the Gujarat Panchayats Act,

1993 (hereinafter referred to as "the Act") as arbitrary, ultra vires, unconstitutional and violative of Articles 14 and 19 of the Constitution of India. A prayer is also made to issue appropriate directions to quash and set aside No Confidence Motion, dated May 15, 1997 (Annexure "B" to the petition).

2. The case of the petitioners is that they are citizens and nationals of India and they are residents of village Indrad. They were registered as voters of said village. It is stated that eight members of the Village Panchayat gave a notice for "No Confidence Motion" against Sarpanch-Smt.Raiben, W/O of Ramaji Maganji Thakore, respondent No.4 to the petition. The notice was given on May 15, 1998 making baseless and false allegations against her. It was asserted by the petitioners that they are interested in proper administration of Village Panchayat and as the issuance of notice was contrary to law and the provisions under which it was issued are unconstitutional and ultra vires the Constitution of India, they are constrained to approach this court by filing the petition.

3. It appears that the matter was placed before the learned vacation judge though vires was challenged in the petition. As per the Gujarat High Court Rules, 1993, such matter can be placed before a Division Bench. But since the petition was filed on May 21, 1999, i.e. during summer vacation, it was placed before the vacation judge. The learned vacation judge after hearing the learned advocate for petitioners issued notice to the respondents and made it returnable on June 28, 1999. Ad-interim relief in terms of para 16 (C) was also granted till returnable date. Thereafter the matter was placed before a Division Bench taking up such matters. The Division Bench admitted the matter on September 2, 1999. Ad-interim relief was ordered to be continued from time to time. Today, the matter is called for hearing.

4. Mr.K.G.Vakharia, Senior Advocate for Mr.Tushar Mehta raised two contentions. Firstly, he submitted that the provisions of Section 56 of the Act are ultra vires, unconstitutional and violative of Articles 14 and 19 of the Constitution of India. Secondly, in the alternative, he submitted that since the procedure required to be followed under the Act has not been followed, notice for no-confidence could not have been issued. It was submitted that when the act of issuance of notice itself was without jurisdiction the objection goes to the root of the matter and the petition deserves to be allowed by quashing and setting aside the notice dated May 15, 1999.

In this connection Mr.Vakharia drew our attention to the provisions of the Gujarat Gram Panchayat Motion of No-Confidence against Sarpanch (Manner of Voting by Gram Sabha) Rules, 1975 (hereinafter referred to as "the Rules").

5. Mr.Joshi, Learned Assistant Government Pleader appearing for respondent No.5, on the other hand, submitted that the provisions of Section 56 cannot be said to be ultra vires or unconstitutional. It was urged that since a notice of no confidence was issued, this court may not interfere at this stage. It is always open to the party aggrieved to take appropriate action in accordance with law after a decision is taken on such notice.

6. Mr.Brahmbhatt, learned advocate for respondent Nos 6 to 13 supported the learned Assistant Government Pleader and added that it is well established law that there is a presumption in favour of Constitutionality of a statute. When a contention is raised that a particular legislative provision is unconstitutional a court will not proceed in that direction presuming the provision to be ultra vires without substantial grounds leading to unconstitutionality of such provision. He submitted that nothing was pointed out even *prima facie* why the provision can be said to be ultra vires, and hence, the petition deserves to be dismissed. Regarding the Rules, he submitted that under the new Act no Rules have been framed and even if Rules have been framed under the Gujarat Panchayats Act, 1961, in view of the fact that the said Act is repealed they can not hold the field as the old Act under which they were framed is repealed.

7. Now Section 56 of the Act which is challenged reads as under:

"56. Motion of no-confidence:--(1) Any member who intends of move a motion of no confidence against the Sarpanch or the Upa Sarpanch may give notice thereof in the prescribed form to the Panchayat concerned. If the notice is supported by one half of the total number of members of the Panchayat concerned, the motion may be moved.

(2) Where in the case of Sarpanch, or as the case may be, the Upa Sarpanch the motion is carried by a majority of not less than two-thirds

of the total number of the members of the panchayat, the Sarpanch or, as the case may be, the Upa Sarpanch, shall cease to hold office after a period of three days from the date on which the motion is carried unless he has resigned and the resignation has become effective earlier, and thereupon the office held by him shall be deemed to have become vacant.

(3) Notwithstanding anything contained in this Act or the rules made thereunder a Sarpanch, or as the case may be, an Upa Sarpanch, shall not preside over a meeting in which a motion of no confidence is discussed against him; but he shall have a right to speak or otherwise to take part in the proceedings of such a meeting (including the right to vote).

(4) When the offices of both Sarpanch and Upa-Sarpanch become vacant simultaneously, such officer as the Taluka Development Officer may authorise in this behalf shall, pending the election of the Sarpanch, exercise all the powers and perform all the functions and duties of Sarpanch but he shall not have the right to vote in any meetings of the panchayat.

(5)(a) Notwithstanding any contained in section 91 or 95 a meeting of the panchayat for dealing with a motion of no confidence with a motion of no confidence under this section shall be called within a period of fifteen days from the date on which the notice of such motion is received by the panchayat.

(b) If the Sarpanch fails to call such meeting, the Secretary of the panchayat shall forthwith make a report thereof to the competent authority and thereupon the competent authority shall call a meeting of the Panchayat within a period of 15 days from the date of receipt of the report".

8. It was strenuously contended that the legislature had advisedly made a distinction between Sarpanch and Up-Sarpanch. As far as the office of Up Sarpanch is concerned it is clear that initially a person must be elected as a Member of the Panchayat and from among the members of the Panchayat elected by people Up Sarpanch can be elected by the House. Thus from one of the members Up Sarpanch can be elected by indirect election

i.e. by members of the Panchayat elected by the people. That is, however, not the position of Sarpanch. The election of Sarpanch is direct election and he is elected by people i.e. by voters of the village. It is, therefore, submitted that if the action is not of removal of a Sarpanch under Section 57 of the Act, he can not be asked to vacate the office by a motion of No Confidence unless such an action is taken by village people as a whole i.e. Gram Sabha.

9. In this connection, our attention was also invited by the learned counsel to the provisions of Section 9, particularly sub section (3) thereof, read with Sections 51, 91, 92, 93 and 94 of the Act. Reliance was also placed on the provisions of Chapter IX of the Constitution of India as inserted by the Constitution (73rd Amendment) Act, 1993. Clause (b) of Article 243 defines Gram Sabha as " a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level."

The learned counsel also placed reliance on Article 243A which reads thus:

"A Gram Sabha may exercise such powers and perform such functions at the village level as the legislature of the State may, by law, provide".

It was submitted that as the Gram Sabha was not called, and as no confidence motion was not moved by convening Gram Sabha the action of issuing notice of No Confidence Motion against Sarpanch who was directly elected by the village people cannot be said to be in consonance with law.

10. The learned Assistant Government Pleader, however, invited our attention to two decisions of the Honourable Supreme Court in (i) Mohanlal Tripathi vs District Magistrate, Rae Bareilly and others AIR 1993 SC 2042 and (ii) Ram Beti vs District Panchayat Rajadhakari and others AIR 1998 SC 1222.

11. In Mohanlal Tripathi the Honourable Supreme Court was called upon to decide the validity of Section 87A of

U.P Municipalities Act, 1916. The said section provided for removal of President by No Confidence Motion. Almost similar contention was advanced before the Supreme Court that as the President was directly elected by the electorate, he could not be removed by the members of the Municipality. It was also argued that if the President elected by the people would be removed by No Confidence Motion by the members of the Municipality, it would be contrary to democratic process. Considering the relevant provision of the Act Apex Court negatived the contention and held that such a provision could not be said to be unconstitutional or violative of general conception of democracy. The court also considered the fact that the Legislature in its wisdom made the provision for No Confidence Motion by 2/3rd majority of the elected members and such a provision could not be said to be arbitrary or unreasonable. The court also observed that though the President was elected by the people directly, No Confidence Motion carried out by by 2/3rd majority of elected members can be said to be a democratic process inasmuch as those member were also elected by people. Thus, removal of a President by No Confidence Motion by 2/3rd majority of members elected by the people is in consonance with the democratic process. In the opinion of the court such matters are in realm of policy and it cannot be interfered with by court. Legislature being the best judge of the needs of the people can decide system of electing representatives to the elective bodies and the manner of their removal. So long the policy is not vitiated by any malafide or extraneous consideration, the courts have neither jurisdiction nor adequate materials to adjudicate upon its validity or correctness.

12. A similar question arose once again in Rambeti. In that case a provision was made in the U.P.Panchayat Raj Act, 1947 for election of Pradhan of a Gram Panchayat. A Pradhan was to be elected by village people. Section 14 of the Act provided for removal of Pradhan by 2/3rd majority of the members of Panchayat. The contention before the Apex Court was that it was against the principle of democracy. Following Mohanlal Tripathi and reiterating the principle laid down therein, the argument was negatived. The Court, after observing that although under Section 14 of the Act, the power of removal of Pradhan was conferred on the members of Gram Panchayat, which was a smaller body than Gram Sabha, the members of the Gram Panchayat having been elected by village people they they represented the same electorate which has elected the Pradhan. The removal of Pradhan by 2/3rd members of the Gram Panchayat who were also elected

representatives of village people was, therefore, in substance removal by the members of the Gram Sabha through their representatives. The Honourable Supreme Court also has taken into account an additional relevant and material fact. It was observed that while considering the provisions of the Act, the possibility of disturbance of law and order in a meeting of the Gram Sabha called for considering a motion for removal of the Pradhan cannot be excluded. Moreover, there cannot be due deliberation of a serious matter of no confidence motion by a very large body of persons.

13. The court, after referring to Mohanlal Tripathi and considering various aspects observed:

"Although under Section 14 of the Act the power of removal of a Pradhan is conferred on the members of the Gram Panchayat which is a smaller body than Gram Sabha, but the members of the Gram Panchayat, having been elected the members of the Gram Sabha, represent the same electorate which has elected the Pradhan. The removal of a Pradhan by two-thirds members of the Gram Panchayat who are also elected representatives of the members of the Gram Sabha is, in fact, removal by the members of the Gram Sabha through their representatives. Just as the Municipal Board is visualised as a body entrusted, with the responsibility to keep a watch on the President, whether elected by it or by the electorate, so also the Gram Panchayat is visualised as a body entrusted with the responsibility to keep a watch on the Pradhan who is not elected by it and is elected by the members of the Gram Sabha. An arbitrary functioning of a Pradhan in disregard to the statute or his acting contrary to the interests of the electorate could be known to the members of the Gram Panchayat only and, in the circumstances, it is but proper that the members of the Gram Panchayat are empowered to take action for removal of the Pradhan, if necessary. It is no doubt true that in Section 11 of the Act provision is made for holding two general meetings of the Gram Sabha in each year and for requisitioning of a meeting of the Gram Sabha by one-fifth of the members. But, at the same time, we can not lose sight of the fact that the number of members of the Gram Sabha is also fairly large. It would range from one thousand to more

than three thousand. Elections to public offices even at village level give rise to sharp polarisation of the electorate on caste or communal basis. The possibility of disturbance of law and order in a meeting of the Gram Sabha called for considering a motion for removal of the Pradhan can not be excluded. Moreover, there cannot also be due deliberation of a serious matter as no confidence motion by a very large body of persons. While amending Section 14 of the Act so as to confer the power to remove the Pradhan of a Gram Sabha on the members of the Gram Panchayat the legislature must have taken into consideration the prevailing social environment. Moreover, by way of safeguard against any arbitrary exercise of the power of removal it is necessary that the motion must be passed by a majority of two-thirds of the members present and voting".

14. In our opinion, the point as regards constitutional validity is thus directly concluded by the above two pronouncements of the Supreme Court, Section 56, therefore, in our considered opinion, cannot be held to be ultra vires or violative of Articles 14 or 19 of the Constitution of India. The first contention, therefore, fails and is hereby rejected.

15. Regarding Rules, our attention was invited by the learned counsel to sub section (3) of Section 94 of the Act which states that "A gram sabha shall carry out any other functions as may be prescribed". The expression "prescribed" is defined in Clause (16) of section 2 as "prescribed by rules". Reliance was also placed on Section 276 of the Act which speaks repeal and savings. Clause (j) of Section 276 reads:

"any appointment, notification, notice, tax, fee, order, scheme, licence, permission, rule, bye-law, regulation or form made, issued, imposed or granted in respect of the local area of an existing panchayat under the repealed Act and in force immediately before the appointed day, shall, in so far as it is not inconsistent with the provisions of this Act, continue to be in force as if made, issued, imposed or granted in respect of the corresponding local area of the successor panchayat under this Act until superseded or modified by any appointment,

notification, notice, tax, fee, order, scheme, licence, permission, rule, bye-law, regulation or form made, issued, imposed or granted under this Act".

16. It is not in dispute by and between the parties that under the new Act no Rules have been framed, but under the old Act rules have been framed, known as "Gujarat Gram Panchayat Motion of No Confidence Against Sarpanch (Manner of Voting by Gram Sabha) Rules, 1975. Rule 3 provides for form of Notice of motion of no confidence against sarpanch. Rule 4 prescribes procedure for such Notice of no confidence motion. Relying on a decision of a single judge of this court Urmilabenben Mangalsinh Jadeja vs State of Gujarat and another (1996)1 GLH 764, the counsel contended that it has been held by this court that even after enactment of new Act in 1993, the Rules made under the old Act would continue to operate to the extent they are not inconsistent with the new Act. There cannot be two opinions about the above proposition of law. The language of the statute itself is clear. The question, however, is as to whether there is specific provision in the new Act regarding motion of no confidence against Sarpanch or Up Sarpanch. In our opinion, a specific provision is made by the legislature for motion of no confidence not only against Up Sarpanch but also against Sarpanch who is directly elected by the village people. For such motion of no confidence, therefore, obviously, the parent Act must prevail provided that said provision is lawful, intravires and constitutional. As held by the Honourable Supreme Court in Mohanlal Tripathi and Ram Beti such a provision can not be said to be unconstitutional or ultravires, and it will have to be given effect.

17. In view of the legal position, the second contention cannot be upheld and accordingly that contention is also negated.

18. For the foregoing reasons, we see no substance in the petition which requires to be dismissed and is accordingly dismissed. Rule is, therefore, discharged. Interim relief is vacated. No order as to costs.

19. The learned counsel for petitioner prays that interim relief which was granted in May, 1999 and is operative till today may be continued for some time so as to enable the petitioner to approach the Apex Court. We would have considered the prayer made by the learned

counsel for the petitioner, but for the fact that in our opinion the point is finally concluded by the Honourable Supreme Court. In these circumstances, the prayer cannot be granted and is rejected.

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